



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Facsimile & First Class Mail

Fax: (202) 728-4044

OCT 24 2011

Phu Huynh, Esq.
Oldaker Law Group, LLP
818 Connecticut Avenue, NW
Suite 1100
Washington, DC 20006

RE: MUR 6040
Representative Charles B. Rangel
Rangel for Congress
National Leadership PAC

Dear Mr. Huynh:

On July 18, 2008, the Federal Election Commission (the "Commission") notified Representative Charles B. Rangel, Rangel for Congress and Basil Paterson, in his official capacity as treasurer and the National Leadership PAC and Basil Paterson, in his official capacity as treasurer ("the Committees"), your clients, of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with copies of the complaint.

After reviewing the allegations contained in the complaint and other information, the Commission, on October 18, 2011, found reason to believe that Representative Rangel violated 2 U.S.C. § 441a(f), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination. Please note that the Commission, in making its findings, considered your response to the additional notification provided to you on October 4, 2011. Also, as you know, the Commission, on February 24, 2010, found reason to believe the Committees violated 2 U.S.C. §§ 434(b) and 441a(f).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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You may submit a written request for relevant information gathered by the Commission in the course of its investigation of this matter. *See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process*, 76 Fed. Reg. 34986 (June 15, 2011).

We look forward to your response.

On behalf of the Commission,



Cynthia L. Bauerly
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Representative Charles B. Rangel

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I. INTRODUCTION

This matter was generated by a complaint filed by Kenneth F. Boehm, Chairman of the National Legal and Policy Center. *See* 2 U.S.C. § 437g(a)(1).

The complaint asserted that Representative Charles B. Rangel's congressional campaign committee, Rangel for Congress ("RFC"), and his leadership committee, the National Leadership PAC ("NLP") (collectively "the Committees"), were provided with office space in Harlem's Lenox Terrace apartment complex at a substantial discount, resulting in unreported prohibited in-kind contributions. 2 U.S.C. §§ 441a(a), 441b; 11 C.F.R. §§ 114.1 and 100.52(d)(1).

II. BACKGROUND

Rep. Rangel represents the 15th Congressional District in New York and RFC is his principal campaign committee. His leadership political action committee, the NLP, is registered with the Commission as a non-connected PAC and multicandidate committee. 11 C.F.R. § 100.5(g)(5); *see* Leadership PACs, 68 Fed. Reg. 67,013 (Dec. 1, 2003).

The rent-stabilized apartment at issue in this matter is located at 40 West 135th Street in New York City in a building owned by Fourth Lenox Terrace Associates a/k/a Lenox Terrace Development Assoc. ("Fourth Lenox"). Fourth Lenox's apartment building is part of a six-building complex called Lenox Terrace. Each of the six buildings that make up Lenox Terrace, including Fourth Lenox, is owned by separate general partnerships. The Olnick Organization ("Olnick"), a New York corporation that

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1 develops residential, commercial and hotel properties, and its affiliate Hampton
2 Management Company ("Hampton"), provide the following services to the Lenox
3 Terrace complex: advertising rentals, accepting and processing residential lease
4 applications, and providing property management services.

5 During the relevant time period, Rep. Rangel leased four rent-stabilized
6 apartments in Fourth Lenox's apartment building at 40 West 135th Street. In 1988, Rep.
7 Rangel and his wife signed a two-year lease for a previously combined rent-stabilized
8 apartment [redacted] In 1997, Rep. Rangel signed a two-year lease for an adjacent
9 rent-stabilized apartment [redacted]

10 In July of 1996, the tenant living in Unit 10U of the building in which Rep.
11 Rangel resides vacated the rent-stabilized one bedroom apartment. On October 16, 1996,
12 Rep. Rangel signed a two-year lease to rent Unit 10U from November 1, 1996 until
13 October 31, 1998 for \$498.87 per month. In pertinent part, the lease states "[y]ou shall
14 use the apartment for living purposes only." The lease also barred the tenant from
15 subletting Unit 10U without the landlord's "advance written consent."¹ Thereafter, Rep.
16 Rangel signed two-year Renewal Lease Forms for Unit 10U in 1998, 2000, 2002, 2004
17 and 2006. The rent for Unit 10U increased with each lease renewal and by the 2006-
18 2008 lease renewal period it was \$677.34 per month.

19 According to Rep. Rangel, he subleased Unit 10U to RFC and the NLP. The
20 available information indicates that RFC started paying rent directly to Fourth Lenox in

¹ Pursuant to section 226-b of New York's Real Property Law, rent-stabilized tenants have the right to sublet their apartments provided the owner is notified by certified mail. The owner is then required to respond to the tenant's request to sublet within thirty days. Tenants who do not comply with the requirements of section 226-b may be subject to eviction proceedings. 9 NYCRR § 2525.6.

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1 December 1996. RFC's 1996 Year End Report indicates that, on December 3, 1996, the
2 Committee paid "office rent" to Fourth Lenox in the amount of \$166.73 per month and,
3 on December 5, 1996, it reimbursed Rep. Rangel \$1,000 for "office rent" paid to Fourth
4 Lenox. It appears that the NLP began splitting the rent for Unit 10U with RFC in
5 November 1998. NLP's 1998 30 Day Post-Election Report indicates that the Committee
6 made its first disbursement to Fourth Lenox on November 12, 1998.

7 Rep. Rangel continued to lease Unit 10U until the 2006 lease expired on
8 October 31, 2008. According to the Statement of Candidacy filed on March 31, 2009, the
9 RFC moved to 193 Lenox Avenue, New York. The NLP continued to report a Post
10 Office Box in New York City as its address. Disclosure reports for both RFC and the
11 NLP indicate that in October 2008 the Committees each began paying a monthly rent of
12 \$2,000 to Wicklow Properties, LLC.

13 The complaint alleged that Rep. Rangel's political committees, RFC and the NLP,
14 occupied Unit 10U at a greatly reduced rent in violation of New York's Rent
15 Stabilization Code ("Rent Code" or "Code"). In support of its allegation, the complaint
16 referenced an attached newspaper article that ran in the July 11, 2008 issue of the NEW
17 YORK TIMES. David Kocieniewski, *For Rangel, Four Rent-Stabilized Apartments*, NEW
18 YORK TIMES, July 11, 2008 ("NEW YORK TIMES article"). The article asserted that Rep.
19 Rangel used Unit 10U "as a campaign office, despite state and city regulations that
20 require rent-stabilized apartments to be used as a primary residence" and that state and
21 city rent regulations permit renewals of rent-stabilized apartments "as long as the
22 [tenants] use it as a primary residence." According to this article, Rep. Rangel and his
23 Committees made use of the office space even while "real estate firms have been accused

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1 of overzealous tactics as they move to evict tenants from their rent-stabilized apartments
2 and convert them to market-rate housing." The article reported that state officials and
3 city housing experts "knew of no one else with four" rent-stabilized apartments. The
4 article also stated that the Committees pay \$630 for Unit 10U while one-bedroom
5 apartments in the same development "are now rented for \$1,865 and up." The complaint
6 also highlighted the article's statements that one of the owners of Olnick contributed to
7 both committees in 2004 and further contributed to the NLP in 2006, and asserts that city
8 records show that in 2005 a lobbyist from the Olnick organization met with Rep. Rangel
9 regarding government approval of a plan to expand Lenox Terrace.² Based on the above
10 information, the NEW YORK TIMES article suggested that the rental arrangement between
11 the landlord, Rep. Rangel and by extension his Committees, "could be considered a gift
12 because it is given at the discretion of the landlord and it is not generally available to the
13 public."

14 According to Rep. Rangel, he did not receive any discount on rent when he
15 entered into the lease for Unit 10U and subleased the apartment to his Committees for the
16 same rent as he was charged. Rep. Rangel also stated that he rented Unit 10U under the
17 same terms as other tenants in the building and was charged the maximum legal rent,
18 including rent increases and all capital costs.

19 By letter dated October 12, 2011, counsel made other factual and legal arguments in
20 response to additional notification by the Commission:

² Sylvia Olnick, who is an owner of Olnick, Inc. contributed \$2,000 to RFC in 2004 and \$2,500 to NLP in 2004 and 2006. Three Fourth Lenox partners also contributed to the Committees. Nancy Olnick Spanu contributed \$1,000 to the NLP in 2006. Fourth Lenox partner Alison Lane Rubler contributed \$1,000 to RFC in 2005 and Fourth Lenox partner Meredith Lane Verona contributed \$1,000 to RFC in 2005 and \$500 to the NLP in 2006.

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- 1 • The House Committee on Ethics ("Ethics Committee") "determined" that Rep.
2 Rangel "paid the maximum rent-stabilized amount for the rental of the Unit"
3 ("Unit 10U"); "found no violation of New York City's rent-stabilization law"
4 ("Rent Code"); "found no evidence of corruption by or personal financial benefit"
5 to Rep. Rangel; and found "no violation of the House gift rule pertaining to the
6 use of" Unit 10U.
- 7
- 8 • "[W]e are not aware of any evidence that Rep. Rangel received a notice" of intent
9 not to renew the lease" (commonly called a "Golub" notice) or of "any evidence
10 that Rep. Rangel knew his congressional office had received complaints from
11 constituents living" at the apartment complex indicating that "the landlord [Fourth
12 Lenox] was instituting non-primary residency proceedings against them."
- 13

14 **III. LEGAL ANALYSIS**

15 The Federal Election Campaign Act of 1971, as amended ("the Act"), provides
16 that no person shall make contributions to any candidate and his or her authorized
17 political committees with respect to any election for federal office which in the aggregate
18 exceed \$2,100 (2006 election cycle) or \$2,300 for (2008 election cycle). 2 U.S.C.
19 § 441a(a)(1)(A). Further, no person shall make contributions to any other political
20 committee in any calendar year, which in the aggregate, exceed \$5,000. 2 U.S.C.
21 § 441a(a)(1)(C). Contributions received by a candidate's committee from a partnership
22 may not exceed \$2,100 per election (2006) or \$2,300 (2008). Contributions received by
23 non-connected committees from a partnership may not exceed \$5,000 per calendar year.
24 As a partnership, Fourth Lenox could have contributed up to \$4,200 to RFC during the
25 2006 election cycle and \$4,600 during the 2008 cycle (primary and general election
26 combined), assuming that any contributions exceeding the primary election limits were
27 properly designated for the general election. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R.
28 § 110.1(b).

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Candidates and political committees may not accept contributions which exceed the statutory limitations of section 441a. 2 U.S.C. § 441a(f). All political committees are required to file reports of their receipts and disbursements. 2 U.S.C. § 434(a). These reports must itemize all contributions received from individuals that aggregate in excess of \$200 per election cycle. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(a)(4). Any in-kind contribution must also be reported as an expenditure on the same report. 11 C.F.R. §§ 104.3(b) and 104.13(a)(2).

A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(A)(i). The Commission's regulations provide that "anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 C.F.R. § 100.52(d)(1). The regulations specifically include facilities as an example of such goods or services. *Id.* The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the political committee. *Id.* The usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.52(d)(2).³

In prior enforcement matters and Advisory Opinions, the Commission has affirmed that the purchase of goods or services at a discount does not result in a

³ The "usual and normal charge" in the New York rental market is affected by New York rent-stabilization regulations.

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1 contribution when the discounted items are made available in the ordinary course of
2 business and on the same terms and conditions to the vendor's other customers who are
3 not political committees. MUR 5942 (RGPC)(the discounted "standby" price that the
4 Rudy Giuliani Presidential Committee paid the New York Times Company for an
5 advertisement was the usual and normal charge for advertisements without guaranteed
6 publishing dates); cf. MUR 5939 (MoveOn.org) at 4-6(the discounted "standby" price
7 that MoveOn.org Political Action Committee originally agreed to pay for a comparable
8 advertisement to run on a specific date was below the usual and normal charge for
9 advertisements with guaranteed publishing dates); *see also* Advisory Opinion 2006 (Pac
10 For a Change)(reduced price for books was the usual and normal charge for bulk
11 purchases directly from the publisher), Advisory Opinion 1994-10 (Franklin National
12 Bank)(waiver of bank fees for political committees was permitted because it was within
13 the bank's practice in the normal course of business regarding its commercial customers
14 and is normal industry practice).

15 Prior to approximately 2004, most of the apartments at Lenox Terrace were rent-
16 stabilized, meaning that they were subject to New York's Rent Stabilization Code,
17 9 NYCRR Parts 2520-2530, which limited annual rent increases (set by a rent guidelines
18 board) and entitled tenants to have their leases renewed. However, a tenant had to use the
19 stabilized apartment as his or her primary residence in order for it to remain under rent
20 stabilization; in addition, the apartment could be deregulated once the monthly rent
21 reached \$2,000 and it was subsequently vacated. The Code sets forth various factors that
22 may be considered in determining whether a tenant remains a primary resident, including

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1 whether the tenant occupies the unit for an aggregate of less than 183 days in the most
2 recent calendar year.

3 Starting in approximately 2003, Hampton, on behalf of Fourth Lenox, the
4 landlord, instituted a non-primary residency program ("program") of actively
5 investigating whether tenants of record in rent-stabilized apartments were residing in
6 their units pursuant to the residency criteria set forth in the Code. The main objective of
7 the program was to maximize profits for the landlord by recapturing apartments and
8 possibly increasing the legal rent to \$2,000 (through a combination of rent increases
9 allowed by the Code) so that the apartments could become deregulated and rented at the
10 market rate.

11 If information showed that the tenant of record had not been using the apartment
12 as his or her residence for the most of the prior year or longer, the tenant generally was
13 served with a notice of Fourth Lenox's intent not to renew the lease. The notice –
14 commonly called a "Golub" notice – was required to be sent between 90 and 150 days
15 prior to the expiration of the lease. The Golub notice contained facts supporting non-
16 residency and notified the tenant that the Fourth Lenox did not intend to renew the lease
17 at the end of the current term. Fourth Lenox began serving Golub notices on non-primary
18 tenants around the first half of 2003, well before the 2004 Golub period for Unit 10U,
19 which ran from May 31 through July 31, 2004.

20 After receiving a Golub notice, if the tenant did not relinquish the apartment upon
21 the expiration of the lease, Fourth Lenox generally started eviction proceedings by
22 sending a notice to the tenant and filing an eviction action in New York Civil Court.
23 Well before the date that rent-stabilized leases were up for renewal, Hampton provided a

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1 list of those tenants to an investigative agency, which then generated a written report with
2 relevant information about each tenant, such as whether public records indicated multiple
3 active addresses. Hampton would also direct inquiries to on-site staff, compare
4 signatures by the purported tenant on various documents, and sometimes hire a private
5 investigator to conduct a more thorough review. Because Rep. Rangel did not use Unit
6 10U as his primary residence, the failure to serve Rep. Rangel with a Golub notice in
7 2004 was inconsistent with Fourth Lenox's lease renewal procedures.

8 Fourth Lenox allowed the Committees to use a rent-stabilized apartment for
9 which the Committees paid less than they would have for non-rent-stabilized office
10 space; the difference constitutes an in-kind contribution under the Act, *see* 2 U.S.C.
11 § 431(8)(A)(i), since the apartment was provided "at a charge that is less than the usual
12 and normal charge for such goods or services [which include 'facilities']" 11 C.F.R.
13 § 100.52(d)(1).

14 The difference between half the market value of the shared space, and the actual
15 rent share paid for Unit 10U over the course of the 2004-2006 leasing period exceeded
16 Fourth Lenox's \$4,200 limit to RFC during the 2006 cycle. The difference over the
17 course of the 2006-2008 leasing period exceeded Fourth Lenox's \$4,600 limit to RFC
18 during the 2008 election cycle. The difference between half the market value of the
19 shared space and the actual rent paid by NLP for Unit 10U in 2005, 2006, 2007 and 2008
20 exceeded Fourth Lenox's annual contribution limit to NLP in each of those years.

21 Commencing with Rep. Rangel's renewal of the lease for Unit 10U in
22 November 2004, the Committees and Rep. Rangel accepted the benefit of reduced rent by
23 making full use of the apartment for political activities while similarly situated tenants

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1 were being served with Golub notices and forced to vacate their apartments. *See, e.g.*,
2 *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (a
3 “knowing” standard does not require knowledge that one is violating a law, but merely
4 requires an intent to act; treasurer “knowingly accepted” excessive contribution even if
5 unaware of donor committee’s non-multicandidate status).

6 The Committees’ Executive Director Walter Swett worked at the Unit 10U office
7 full time and knew it was rent-stabilized. After he received the lease renewal forms
8 (which also indicated that the apartment was stabilized), he would have them signed by
9 Rep. Rangel. In addition, Rep. Rangel signed the renewal leases in 2004 and 2006 on
10 behalf of the Committees with full knowledge that Unit 10U was a rent-stabilized
11 apartment; he also signed the original 1996 lease and all other renewal forms. The lease
12 required Rep. Rangel to use Unit 10U “for living purposes only” and barred him from
13 subletting the apartment without the landlord’s “advance written consent,” which he
14 never obtained; further, the renewal leases he signed stated that they were subject to the
15 prior terms and conditions. Moreover, Rep. Rangel’s congressional office received
16 complaints from constituents living in Lenox Terrace regarding non-primary proceedings
17 brought against them by the landlord.

18 Regarding the arguments in Rep. Rangel’s October 12, 2011 response, although
19 counsel argues that the Committees have been paying the maximum rent for Unit 10U
20 under the Rent Code and Rep. Rangel may not have “violated” the Rent Code, the legal
21 analysis does not turn on Rent Code rules. Instead, the Commission concludes that by
22 remaining in a rent-stabilized apartment when similarly situated tenants were being
23 forced to relinquish their apartments, the Committees were paying a discounted rent that

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1 constituted an in-kind contribution from the landlord, Fourth Lenox. Similarly, whether
2 there is "evidence of corruption" or a violation of "House gift rules" is not relevant to
3 whether a contribution resulted from the preferential treatment afforded Rep. Rangel
4 when Fourth Lenox did not apply its "non-primary residency program" against Rep.
5 Rangel.

6 The response also states that Rep. Rangel lacked knowledge of whether he was
7 ever issued a Golub notice or whether his congressional office had received complaints
8 from constituents about the non-primary residence program. However, it is precisely
9 because Rep. Rangel did not receive a Golub notice -- and therefore was not forced to
10 vacate Unit 10U, unlike numerous other similarly situated tenants -- that he may have
11 paid less than the customary charge for the space. Also, documents made public by the
12 House Ethics Committee revealed that Rep. Rangel's staff received complaints from
13 constituents living in Lenox Terrace regarding legal actions brought against them by
14 Olnick (the apartment's management company) based on non-primary residency. *See,*
15 *e.g., House Ethics Committee Statement of Alleged Violation at 26, available at*
16 *<http://ethics.house.gov/committee-report/matter-representative-charles-b-rangel>.*
17 Rep. Rangel's District Director even appears to have met with Fourth Lenox management
18 on behalf of tenants organizing a rent strike in response to this situation. Although there
19 is no direct evidence regarding Rep. Rangel's knowledge regarding these activities, it
20 seems unlikely that he was completely unaware of these events given that he resided in
21 the apartment complex and had campaign staff operating out of Unit 10U. In any case,
22 Rep. Rangel personally signed the original lease and all renewal leases for Unit 10U;

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1 each of those documents required him to use the premises for living purposes only, which
2 he did not do.

3 Therefore, there is reason to believe that Rep. Charles B. Rangel violated 2 U.S.C.
4 § 441a(f) by accepting excessive in-kind contributions from Fourth Lenox.

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